IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 330 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANUBHAI CHHOTABHAI AMIN

Appearance:

1. Special Civil Application No. 330 of 2002

MR SP SEN, AGP for Petitioner No. 1

RULE SERVED for Respondent No. 1,10

MR AJ PATEL for Respondent No. 2-9

DELETED for Respondent No. 11

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/04/2002

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the State of Gujarat through the Deputy Collector (Land Reforms), Vadodara has challenged the judgment and order dated 6.11.2000 (Annexure "F") passed

by the Gujarat Revenue Tribunal allowing the respondents' review application No. TEN.CA 21 of 1999 by which the Tribunal set aside its judgment and order dated 16.4.1999 in a revision application under Section 76 of the Bombay Tenancy & Agricultural Lands Act, 1948 (hereinafter referred to the "Tenancy Act").

2. In the facts and circumstances of the case, particularly in view of the fact that the controversy raised herein does not survive by virtue of the amendments made to Section 2(6) of the Tenancy Act, with the consent of the learned counsel for the parties, the petition is taken up for final disposal today.

3. The respondents herein purchased land admeasuring Acres 1-30 Gunthas and bearing Survey No. 439/1/1/ in village Chhani, Taluka & District Vadodara by a registered sale deed dated 17.8.1981. Mutation entry to that effect was made and ultimately certified on 27.11.1981. The Mamlatdar & ALT, Vadodara initiated proceedings under Section 84C of the Tenancy Act on 23.10.1983 on the ground that the respondents did not have an agricultural land within 8 kms. of the aforesaid land. The respondents submitted that they are members of a joint Hindu family; they held lands in different villages in the State of Gujarat and that, therefore, they were agriculturists. The authorities upto the level of Deputy Collector held that the other agricultural lands possessed by the respondents were beyond a distance of 8 kms. from the land in question. The respondents, therefore, preferred revision application No. 475 of 1992 before the Gujarat Revenue Tribunal. By its judgment and order dated 16.4.1999, the revision application was dismissed. The respondents preferred a review application which came to be allowed by the judgment and order dated 6.11.2000 on the ground that the contention about amendment to Section 2(6) of the Tenancy Act having been made retrospectively by Gujarat Act No. 4 of 1995 was not considered by the Tribunal. The revision application accordingly came to be allowed.

4. In the present petition filed by the State of Gujarat through the Deputy Collector, the impugned order of the Tribunal in the review application is challenged. The grounds urged in the present petition are mainly two. Firstly, respondent Nos. 1 to 4 in whose names the land in question was purchased at the relevant time in 1981 are not agriculturists as defined by the provisions of the Tenancy Act while some had agricultural lands beyond a distance of 8 kms. and that the land was purchased jointly in the name of 9 persons only in order to make

some of them agriculturists although they did not have any agricultural land.

Secondly, it is submitted that the disputed land in question was a fragment and, therefore also, there is a breach of provisions of the Bombay Fragmentation of Holdings of Consolidation of Lands Act, 1947 (hereinafter referred to as "the Fragmentation Act")

5. As far as the first ground of challenge is concerned, it is true that what had weighed with the lower authorities initially was that the agricultural lands which were held by the respondents herein were beyond a distance of 8 kms. from the land in question. However, that aspect of the matter is not of relevance now in view of the amendments made to the provisions of Section 2(6) of the Tenancy Act by virtue of the provisions of the Gujarat Act No. 4 of 1995 read with the Gujarat Act No. 3 of 2001. Hence, irrespective of the distance between the agricultural land in question and the other agricultural lands held by the respondents within the State of Gujarat, the objection would not survive based on the distance between the two agricultural lands.

6. However, there is substance in the contention raised by Mr Sen that the respondents in whose names there were no agricultural lands at the time of purchasing the land in question cannot become agriculturists merely because they joined the agriculturists in purchasing the agricultural land.

As regards the said argument, the submission of Mr Patel for the respondents is that since the respondents are members of a joint Hindu family, the respondents had jointly purchased the land in question, but the respondents are prepared to make it clear that the purchase shall stand confined to the names of only those persons who were holding agricultural lands at the time of purchasing the land in question on 27.11.1981.

The Mamlatdar & ALT shall accordingly verify this aspect and make appropriate changes in the mutation entries in this behalf.

7. Coming to the second ground of challenge, the learned AGP submits that since the area of the land is less than one unit permissible under the Fragmentation Act, on that ground also, the transaction was void.

8. As regards the above controversy, Mr Patel for

the respondents submits that such a ground was never raised before any of the lower authorities and, therefore, it is not open to the authorities to raise such a ground after a lapse of more than 20 years from the date of certification. Even otherwise, it is submitted that the notice under Section 84C of the Tenancy Act was issued on 23.10.1983 i.e. after almost two years from the date of certification of the entry regarding the purchase of the land. Hence, there was unreasonable delay in initiation of proceedings.

9. Having heard the learned counsel for the parties, it appears to the Court that when the question of land being a fragment was never raised before the lower authorities, it is not open to the petitioner-State of Gujarat to raise such a contention in this petition under Article 226 of the Constitution. The question whether the land is a fragment or not would be a mixed question of law and fact which cannot be permitted to be raised in a petition under Article 226 of the Constitution and that too after a passage of 20 years from the date of certification of the entry in question.

10. The petition is, therefore, dismissed with a clarification that the ownership of the land in question shall be confined to only those respondents who were holding agricultural land on the date of purchasing the land in question on 17.8.1981 and that the respondents shall make an appropriate application to the Mamlatdar, Chhani pointing out this fact alongwith a copy of this order.

11. Subject to the aforesaid clarification, Rule is discharged with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)
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